

EXHIBIT 2

Declaration of Mark Durno

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

THE STATE OF OHIO,)	
)	
and)	
)	
UNITED STATES OF AMERICA,)	
)	
Plaintiffs,)	Civil Case No. 4:23-cv-00517
v.)	
)	
NORFOLK SOUTHERN RAILWAY)	
COMPANY,)	
)	
and)	
)	
NORFOLK SOUTHERN CORPORATION,)	
)	
Defendants.)	

DECLARATION OF MARK DURNO

I, Mark Durno, declare as follows:

1. I am employed by the United States Environmental Protection Agency (EPA). I work in EPA Region 5, which serves Illinois, Indiana, Ohio, Michigan, Wisconsin, and Minnesota. I am based out of Region 5's Westlake, Ohio office, and my current title is Homeland Security Advisor.

2. I first began working at EPA in 1997 as an On-Scene Coordinator in Region 5's Superfund Division (now called the Superfund and Emergency Management Division), after receiving my Bachelor of Science in engineering from the Rose-Hulman Institute of Technology and working as an EPA technical assistance contractor (Ecology and Environment, Inc.) from 1992 to 1997. I then worked as a supervisor in Region 5's Superfund and Emergency Management Division from 2008 to 2012, and Deputy Chief of Region 5's Superfund and

Emergency Management Division from 2012 to 2017, until I became the Homeland Security Advisor in 2017.

3. I am also trained as a member of EPA Region 5's Incident Management Team and assist with the management of this group, which includes EPA personnel in Region 5 who are trained to respond to emergencies. I have maintained my federal On-Scene Coordinator credentials as part of my past and current EPA duties so that I can continue to respond to emergency incidents on behalf of EPA. I have also completed the required Incident Command System (ICS) training.

4. The ICS is a flexible, scalable structure used by EPA (as well as other agencies and organizations across the country) that provides for standardized processes, procedures, organizational structure, and common terminology for managing an incident. The Incident Commander is responsible for the overall management of the incident and the Incident Command staff. Where there are multiple organizations responding to an incident, the Incident Command organization may be expanded to a Unified Command, which is a structure that allows multiple organizations to coordinate an effective response while also carrying out their own responsibilities. The role of the federal On-Scene Coordinator is to oversee the emergency response on behalf of EPA.

5. During my career, I have deployed to a number of complex emergency incidents throughout the Midwest and nationally. These incidents include the Lorain County Pesticide site in Ohio, Capitol Hill Anthrax response in Washington, D.C., the Hurricane Katrina/Rita disaster response in Louisiana, the Enbridge Oil Spill in Michigan, the Flint Drinking Water Incident in Michigan, and the Benton Harbor Drinking Water Response in Michigan. I served as EPA's

Unified Command representative and federal On-Scene Coordinator in the Flint Drinking Water Incident.

6. I have particular expertise in leading and supporting public communications and community engagement efforts during emergency response actions. In 2006, I was nationally recognized by receiving the “Excellence in Community Involvement Award” for my efforts to lead EPA’s response to provide relief to an Ohio community that was being exposed to unacceptable levels of hydrogen sulfide released from a nearby commercial facility. In 2010, I served as a deputy Incident Commander at the Enbridge Oil Spill and my specific duties were to synthesize incident response information and provide frequent updates and critical information to the public, media, stakeholders, and congressional and community leaders. This approach from the Enbridge incident was applied to both drinking water incidents in Flint, Michigan, and Benton Harbor, Michigan, as well as the East Palestine Train Derailment Incident. In all of these emergency response deployments, a major focus of my work was to conduct and improve upon best-practice activities developed during the Enbridge incident.

7. I deployed to East Palestine in February 2023, and I continue to conduct my duties on the ground there as of October 2024. After the February 3, 2023 derailment in East Palestine, I deployed to support regional incident coordination and was asked to assist primarily with EPA’s public information communications and community engagement efforts related to the derailment and cleanup. Due to the complexity of this incident, I was also asked to support the Unified Command’s Environmental Unit and assist with specific technical tasks throughout this response, as well as serve on EPA’s regional incident coordination team.

8. My primary responsibilities in East Palestine have included providing timely and critical information and data to partner agencies, public officials, national and local

organizations, individual community members, and the media. These duties include organizing, attending, and speaking at meetings with community members and other stakeholders to answer questions about the derailment and cleanup, as well as to relay information to the community about the cleanup activities; conducting outreach to community stakeholders; and working with EPA's local, state, and federal public health and agriculture agency partners to address residents' public health questions and concerns about the derailment and February 6, 2023 "vent and burn." I am therefore very familiar with the cleanup activities in East Palestine as well as the work EPA has done in East Palestine to communicate, coordinate, and engage with the community.

9. For the East Palestine Train Derailment Incident, members of the Unified Command have included EPA, Ohio EPA, Columbiana County, the Village of East Palestine, and Norfolk Southern. EPA and its partners in Unified Command—which as of June 2024 transitioned to a Multi-Agency Coordination Group—have prioritized communicating and engaging with the East Palestine community, as well as surrounding communities, to provide information about the cleanup and the potential impacts of the derailment. EPA has also strived to be transparent with the community regarding the derailment's potential impacts on the community's air, water, and soil. Shortly after the derailment, EPA and other federal agencies began engaging with the community through a broad range of venues and tools, including engagement at public meetings and events, individual assistance at the EPA's Welcome Center and via a hotline, meetings with a community-based network, regular newsletters, and an "East Palestine, Ohio Train Derailment" website that provides detailed information about EPA's cleanup activities, such as the results of air, soil, sediment, groundwater, and drinking water testing.

10. Since February 2023, EPA has held or attended over 40 public meetings and community events to provide information to local residents in Ohio and Pennsylvania about the derailment and EPA's cleanup activities and to answer their questions. These in-person events have included five town hall meetings, four community meetings organized by stakeholders, ten information sessions, 18 community events, and six open houses. Along with EPA's Community Involvement Coordinators, I facilitated and attended all of EPA's public information sessions.

11. In June 2023, EPA held three information sessions with federal, state, and local public health agencies specifically to provide a forum to discuss community members' health concerns and to provide information about available public health resources. I worked with the public health experts in advance of these sessions to ensure they understood what the community's concerns were.

12. During the first public health session, on June 1, 2023, the National Institutes of Health (NIH) discussed a series of workshops it would be holding to evaluate public health research needs in the community. Dr. Erin Haynes of the University of Kentucky presented about a research study that would measure biomarkers of exposure in about 100 East Palestine volunteers. In July 2023, I participated in the University of Kentucky health research study as a full-time deployed responder.

13. During the second public health session, on June 6, 2023, EPA provided a public health update with the Centers for Disease Control and Prevention (CDC) and the Agency for Toxic Substances and Disease Registry (ATSDR) as well as state and local partners, including the Columbiana County Health Commissioner, the Ohio Department of Health, the Pennsylvania Department of Health, the Pennsylvania Bureau of Emergency Preparedness and Response, and the Cincinnati Drug and Poison Information Center. During this session, a representative from

the CDC provided an overview of the contaminants released from the derailment, acute symptoms and latent health effects that may be caused by exposure to such chemicals, and tests that can be performed by physicians to monitor for changes in health that may be associated with chemical exposure. ATSDR explained the Assessment of Chemical Exposures (ACE) investigations it conducted and the preliminary results of those investigations. The ACE investigations, which ATSDR conducted in collaboration with the Ohio Department of Health from February 21 to March 31, 2023, were intended to evaluate the derailment's impact on the community's health and assess ongoing public health needs. Community members had the opportunity to respond to ACE investigation surveys in person at the health resource center, through a weblink, and in response to door-to-door canvassing. The health resource center was initially established at a local church to make local public health, mental health, and other support staff available to provide support to the community prior to the State of Ohio funding the establishment of the East Liverpool Hospital Clinic in East Palestine.

14. The last public health information session, on June 20, 2023, focused on available public health resources and included, as presenters, the Community Action Agency of Columbiana County and the Columbiana County Mental Health and Recovery Services Board.

15. In February 2023, EPA's Community Involvement Coordinators began staffing a hotline 12 hours every day to help support residents and businesses, and at the end of February 2023, EPA opened a storefront Community Welcome Center in East Palestine. The Welcome Center has allowed community members to meet face-to-face with EPA and public health agency staff, including technical experts, to ask questions and learn about EPA's response to the derailment, including the various air, soil, groundwater, and drinking water testing and results. Beginning at the end of February 2023, for example, staff from the CDC as well as state health

agencies were available at the Welcome Center to answer health related questions from community members. EPA also encouraged visitors at the Welcome Center to record their health concerns through the ACE investigation process, discussed above.

16. EPA's Welcome Center was used by the Department of Justice in July 2024 to host two days of availability sessions, during which they held several meetings with community members about the proposed Consent Decree in this case. At these meetings, individuals had the opportunity to meet with the Department of Justice and EPA staff, including myself, to discuss the proposed settlement. EPA helped get the word out to the community about these meetings by putting the Department of Justice's fact sheet about the settlement on the front page of EPA's East Palestine website, as well as in the community newsletter, both of which are discussed in more detail below. The fact sheet included information about the community sessions to discuss the settlement, such as how to schedule an appointment. EPA also provided information about these Department of Justice meetings and the fact sheet to a community stakeholder group for dissemination throughout the community. In total, 39 people attended the availability sessions with the Department of Justice and EPA. I had personally spoken with many of these attendees (some many times) previously as part of my community engagement role, and many concerns they raised about the potential health and environmental impacts of the derailment were issues I have been frequently discussing with them and other members of the community over the past year and a half.

17. Since it opened, EPA's Welcome Center has had over 1,100 visitors and has received more than 1,400 phone calls. The Welcome Center was originally open 12 hours a day, seven days a week, and currently remains open by appointment. EPA intends to keep the Welcome Center open at least until the cleanup activities are complete, and will provide advance

notice to the community if there are any changes to the Welcome Center, such as it being moved or closed.

18. EPA, together with its federal, state, and local partners, also developed a newsletter to regularly update community members about the cleanup activities, answer frequently asked questions, and provide notices of health resources and upcoming community events. First issued in March 2023, 31 editions of the newsletter have been published and distributed to more than 8,000 addresses in the Village of East Palestine, Negley (in Ohio), Darlington Township (in Pennsylvania), and surrounding communities. The newsletter was initially issued weekly, and then with decreasing but regular frequency as the cleanup has continued. Copies of each newsletter are also available on EPA's East Palestine website.

19. EPA's East Palestine website, which was set up immediately after the derailment, hosts a wide variety of important resources for the public. For example, starting on February 4, 2023, the day after the derailment, EPA began posting near-daily "operational updates" on its website with key information about the derailment, environmental monitoring and sampling, and cleanup activities. Eventually, after the major removal activities were complete, these updates transitioned to weekly updates, and are currently being done on an as-needed basis. The website also includes a list of resources for local residents, including information about the State of Ohio's health clinic in East Palestine as well as contact information for state and local public health agencies.

20. EPA's East Palestine website describes all of the air, soil, sediment, groundwater, and water testing that has been completed to date, and provides EPA's monitoring and sampling data in an accessible and interactive format. Photographs, maps, and videos of the derailment area and cleanup work, as well as presentations, are also available on EPA's East Palestine

website. There is also a documents section of EPA's East Palestine website that includes a variety of EPA letters, orders, and other documents, such as EPA's CERCLA and Clean Water Act Unilateral Administrative Orders and directives, approved workplans submitted by Norfolk Southern under those orders, as well as a hyperlink to a webpage containing thousands of records related to the derailment that have been released by EPA under the Freedom of Information Act.

21. EPA intends to continue to use its East Palestine website to share information with the community about the Consent Decree in this case, including the plans that Norfolk Southern is required to submit under the Consent Decree, and EPA will continue to facilitate community engagement and outreach to keep the public informed as Norfolk Southern fulfills its various responsibilities under the Consent Decree.

22. EPA's public outreach strategy as well as other aspects of its work in East Palestine have been informed by input from a community stakeholder network that includes about 40 trusted community leaders representing civil and faith-based organizations, local government, and residents. The Federal Emergency Management Agency (FEMA), with support from EPA and local officials, conducted the initial outreach to assemble this stakeholder group in February 2023, and EPA's Community Involvement Coordinators expanded the group throughout the response. To date, EPA has convened over 40 meetings with this community stakeholder network. Feedback from this group has informed EPA's communications to the community. For example, based on feedback from the community stakeholder group and previous public information sessions, EPA held three public health information sessions in June 2023, discussed above in Paragraphs 11-14. Feedback from this group also informed the content of EPA's newsletters.

23. In addition to the community stakeholder group, EPA has engaged with other community groups and community contacts to discuss community concerns as well as cleanup activities. These interactions have similarly informed EPA's wider public outreach strategy and work in East Palestine. For example, EPA received information and data from community members regarding areas of concern in Sulphur Run—one of the local streams that was contaminated by the derailment. As a result, EPA directed Norfolk Southern to assess certain areas of Sulphur Run more closely. In February 2023, after residents raised concerns about the need for dioxin testing in soil throughout the community, EPA ordered Norfolk Southern to develop and implement a comprehensive soil sampling plan to test the soil at more than one hundred locations in and around East Palestine.

24. In early March 2023, EPA provided the Technical Assistance Services for Communities (TASC) resource to the Village of East Palestine. TASC funding was used to hire technical experts to help the community interpret and understand the science, data, and other technical issues related to the derailment and subsequent cleanup. Shortly after the resource was provided, the Village used a TASC contractor to evaluate data collected in East Palestine Park to ensure a community event could be held there safely and provided additional assurance to event coordinators and community members. Since then, the TASC contractor has held several presentations, facilitated by the Village, to inform the greater community of all publicly available information and data and provide independent analysis of that data. The most recent presentation was conducted on September 24, 2024.

25. Through my conversations with community members, I have been made aware of concerns about the presence of hazardous substances which are based on the results of third-party nongovernment testing. In each case, EPA has reviewed the information and provided

feedback and follow-up as necessary. Through this process, EPA has not encountered any data indicating that chemicals released by the derailment, vent and burn, or subsequent cleanup are present at unsafe levels in the community away from the derailment area. An example of this process was in June 2024, when I, along with other EPA staff and an outside expert, met with a family who had independent air sampling conducted at their home. EPA reviewed their data and report and determined that the vinyl chloride detected just outside their home was not associated with the derailment. This determination was based on a number of considerations, including the weather conditions at the time the sampling was conducted which indicated that the home was not downwind from the derailment area as well as the distance of the home from the derailment area (2 miles), and the fact that the samples were collected in February 2024 and there were no confirmed detections of vinyl chloride in ambient air at the derailment area or elsewhere in the community in 2024 from site related activities.

26. Based on my conversations and interactions with community members, as well as my review of information collected by other federal agencies, it is clear that many people in the community are concerned about the potential long-term health impacts of the derailment and the February 6, 2023 vent and burn. For example, during the public health information sessions held in June 2023 discussed above in Paragraphs 11-14, many residents asked questions about potential exposures to dioxins and contaminants associated with the derailment, including vinyl chloride, benzene, and chemical mixtures, stated that they were experiencing health issues after the derailment, and expressed concern about possible long-term health impacts of the derailment. During the ACE investigations conducted by ATSDR and the Ohio Department of Health in February 2023 and March 2023, individuals who responded to the investigation surveys—including first responders—similarly expressed concerns with potential long-term health effects

of the derailment for themselves and/or their children. These long-term health concerns are consistent with concerns that community members have raised to me during other meetings and events throughout the response.

27. On November 6 and November 7, 2023, the National Academies of Sciences, Engineering, and Medicine (National Academies) hosted a two-day virtual public workshop on health research and surveillance priorities related to the derailment, which I attended and presented on air, water, and soil sampling results. Panelists at that workshop provided insight into acute health symptoms while discussing uncertainties and concerns about potential long-term health effects of the derailment. Panelists explained that, based on their knowledge at the time, the acute health effects were expected to resolve over time. Given the uncertainties about future long-term health impacts, however, several panelists explained that there was a need for continued health monitoring and research of the exposed population.

28. At the June 2023 public health information sessions, many residents also noted the rise in mental health issues, including anxiety, post-traumatic stress disorder, and substance abuse, and expressed the need for support groups and referral services to address these issues. Similarly, a majority of individuals who responded to the ACE investigation surveys reported that they had at least one new or worsening symptom affecting their mental health. These mental health concerns are consistent with concerns and questions that community members have raised to me during other meetings and interactions throughout the response. Panelists at the November 2023 National Academies workshop also emphasized gaps in mental healthcare options in the community, and stated that mental health support will be critical for affected community members.

29. Throughout the response I also met with representatives from FEMA regularly to discuss the community's concerns, and I reviewed materials that were created by FEMA to guide FEMA's development of a long-term recovery needs assessment for East Palestine. In those materials, FEMA identified long-term health monitoring and treatment for first responders and community members and expanded mental healthcare services as key stakeholder priorities.

30. The proposed Consent Decree in this case includes a Community Health Program that consists of long-term medical monitoring and mental healthcare services for local residents. In developing this program, EPA considered the health concerns raised by community members during the information sessions, workshops, and EPA's other interactions with community members, as well as EPA's conversations with state, local, and federal public health experts.

31. On April 12, 2024, NIH announced that the agency had awarded six grants to research institutions to study the short and long-term health impacts of the derailment. *See* NIH, *Six NIEHS Grants Announced to Study Health Effects of Ohio Train Derailment*, <https://nihrecord.nih.gov/2024/04/12/six-niehs-grants-announced-study-health-effects-ohio-train-derailment>.

32. Pursuant to Section XI of the proposed Consent Decree, Norfolk Southern is required to submit for EPA review and approval a Community Health Program Plan and Community Facilitation Plan. On July 22, 2024, EPA received the draft Community Facilitation Plan from Norfolk Southern, and on August 21, 2024, EPA received the draft Community Health Program Plan from Norfolk Southern.

33. Before receiving these plans, I attended three meetings that were facilitated by Norfolk Southern to seek community leader input on the plans. During these meetings, as well as during the July 2024 community sessions held by the Department of Justice and EPA, local

health providers stated that the medical monitoring exams provided under the Consent Decree should include urinalysis and complete blood count tests. Based on this input, the draft Community Health Program Plan submitted by Norfolk Southern includes both urinalysis and complete blood count tests on the list of “covered services” that will be provided during the medical monitoring exams.

34. I am currently working as part of the EPA team to review and provide comments on the draft Community Facilitation Plan and the draft Community Health Program Plan. The EPA team is consulting with subject matter experts within the federal government to review specific portions of both plans, including issues related to public outreach, components of the health monitoring exam and testing, and the specifics of the mental health services plan. EPA has also sought and received initial feedback from the community stakeholder group regarding certain elements of the draft Community Facilitation Plan. Input from the stakeholder group will be incorporated into EPA’s review of the plan.

35. EPA has received feedback from village and county officials as well as from local medical professionals about the need for some form of patient registry or other way to track and share health data obtained under the Community Health Program in order to identify trends. EPA is currently coordinating with NIH, ATSDR, and other federal agencies to evaluate potential data sharing options and tools that could be incorporated into the Community Health Program Plan. In its draft plan, Norfolk Southern incorporated the concept of public health data tracking by stating that the Administrator of the Community Health Program will endeavor to facilitate the sharing of data between providers (subject to participant consent) and entities or organizations, such as the NIH research grantees, that are identified to conduct data tracking and analysis.

Pursuant to 28 U.S.C. § 1746, I declare under the penalty of perjury that the foregoing is true and correct.

DATE: October 9, 2024

MARK DURNO
Digitally signed by MARK
DURNO
Date: 2024.10.09 14:13:15
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Mark Durno